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SCIENTIFIC STUDY OF LAW

dollar was given to the state, and seventy-five cents was retained by the sheriff for the prisoner, and the accumulated sum paid to him when he left prison. The innovation was extended and the men's earnings now amount to a considerable sum.

The Montpelier plan succeeded because under its operation the prisoners were trusted. They were given responsibilities of their own.

Mr. Swift says that "when such a prisoner finds that he is treated as a man, 'a feeling of mingled surprise, gratitude, elation, and pride, awakens in him; he learns for the first time the value of social esteem and determines to deserve it.' Other counties have, to some extent, adopted the system, but so far not with anything like the success obtained in Montpelier. It is evident that the personal equation counts in this matter, and that the character of the sheriff at Montpelier has a good deal to do with the success of the experiment there; an officer carrying on such a system must not only be a 'combined labor bureau and labor exchange,' but must have a really sincere interest in the welfare of the prisoner. The law itself was not a remarkable one, but the way in which it has been carried out seems extraordinary, and full of suggestion and promise. The Montpelier plan appeals to the self-interest of the prisoner in a practical way, and it develops also strength of purpose and self-respect. One question at once arises in the minds of the readers: What attitude would the labor unions take as regards such a plan? At Montpelier the men have been employed only in comparatively unskilled forms of work, even although they had learned a trade; but Mr. Swift tells us that he was assured by a trade union leader that there would not be the slightest objection on the part of the unions to any man with a trade exercising it, provided he were given union wages. It would not be safe to draw sweeping conclusions from the experiment described; but it is certainly true that such an attempt deserves most careful consideration. Mr. Swift points out that there has been a general movement the country over in the direction of giving a new chance to criminals who are not hardened. As a striking instance of this he quotes a sentence imposed by a judge in Los Angeles upon a young man who had embezzled five thousand dollars and spent it in dissipation: 'You shall stay at home nights. You shall remain within the limits of this county. You shall not play billiards or pool, frequent cafes, or drink intoxicating liquor, and you shall go immediately to work and keep at it until you have paid back every dollar you stole. Violate these terms and you go to prison.' "

R. H. G.

The Scientific Study of the Law.—The following is quoted from a letter by Mr. Axel Teisen, of Philadelphia, to the editor of the *Central Law Journal*, who very emphatically approves the plan herein set forth:

"As far as I have been able to learn, there is not in this whole country a single periodical solely devoted to the scientific discussion of law, except, perhaps, some university publications, more or less in the nature of playgrounds for budding jurists. The practical portions of the journals are the most important, and all theoretical papers have to be cut short, as but a small space can be allowed to them.

"A purely theoretical periodical would probably not pay; but in case of an old-established, very widely known and appreciated publication, might it not be practical and possible to devote one issue each month to theoretical discus-

CONCEPTS OF PUNISHMENT AND DAMAGES FOR TORT

sions, leaving the other three or four to deal with reports and discussions of cases, etc., with such editorial remarks as they might call for? Such an arrangement would give contributors a chance, not merely to make remarks about legal questions, but to take them up for a thorough discussion. In this way a beginning might be made towards the creation of a scientific jurisprudence, the lack of which is much felt, and which some people have thought could be supplied, if somebody would give a million or so for the purpose of creating an American corpus juris."

R. H. G.

The Concepts of Punishment and of Damages for Tort.—Prof. Giulio J. Battaglini, a translation of whose article on the "Function of Private Defense in the Repression of Crime" appeared in the last issue of this JOURNAL, in a pamphlet reprinted from the *Rivista Penale*, discourses upon the concepts of punishment and of damages for tort. Punishment and damages for tort, he says, are both consequences of anti-juridicity. But punishment is the sanction of criminal law while damages for tort are the sanction of private right. There is no substantial criterion of distinction between crime and tort. The only sure and irrefragable criterion is formal. Crimes are torts prosecutable in a peculiar way, namely, by way of punishment. We cannot say that the imposition of punishment indicates that the public interest is involved and that the imposition of the obligation to pay damages indicates that private interest is involved, because every judicial guard shields both public and private interest. When we speak of public interest we mean an interest immediately public, and when we speak of private interest we mean an interest immediately private. But we cannot draw a line of demarkation even between these. It is the fiat of the legislator that distinguishes between them and that declares one act or omission affected with an immediately public interest and another act or omission affected with an immediately private interest.

Merkel and Heinze say that damages for tort are but a species of punishment. But, it seems to the author, damages for tort are intended to heal an old wound, while punishment produces a new wound. That damages for tort are not punishment is shown by this fact, among others, that the granting by the state of the right to sue for damages does not exempt from penal discipline. Venezian says that punishment is an absolute evil inasmuch as it means privation for one without corresponding advantage to another, while damages for tort are a relative evil inasmuch as damages are a loss to him who must pay them but a profit to him who receives them. But this is a mistake. Does not the state benefit from the fear raised in the breasts of the generality of individuals and from the prevention of the commission of more crimes during the imprisonment of the criminal?

There is a further difference between the concepts under analysis. The undergoing of punishment requires only a passive behavior, the obligation to pay damages implies active conduct. The essence of punishment is the restriction of the liberty of individuals. And in the case of fines we have a near approach, at least in semblance, to damages for tort. Punishment for crime can never be the consequences of anything but an act against law; but damages may be imposed for conduct allowed by law. For example, Art. 713 of the Italian Civil Code and Sec. 962 of the German Civil Code authorize the owner of bees to follow them into the property of others, but they enjoin that he re-